

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

- - - - -

David Stults and	:	
Barbara Stults,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. C09-4100 DEO
	:	
American Pop Corn Co.,	:	
et al.,	:	
	:	
Defendants.	:	

- - - - -

DEPOSITION OF CHARLES A. PUE, M.D.

- - - - -

Taken at Spectrum Reporting LLC  
333 Stewart Avenue  
Columbus, OH 43206  
September 13, 2013, 9:00 a.m.

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<p><b>EXHIBIT</b></p> <p><b>A</b></p>
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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1</p> <p>2</p> <p>3 ON BEHALF OF PLAINTIFFS:</p> <p>4 Humphrey, Farrington &amp; McClain, P.C.</p> <p>5 221 West Lexington Avenue, Ste. 400</p> <p>6 Independence, MO 64050</p> <p>7 By Scott B. Hall, Esq.</p> <p>8</p> <p>9 ON BEHALF OF DEFENDANT SYMRISE, INC.:</p> <p>10 Swanson, Martin &amp; Bell, LLP</p> <p>11 330 North Wabash, Ste. 3300</p> <p>12 Chicago, IL 60611</p> <p>13 By David E. Kawala, Esq.</p> <p>14</p> <p>15 ON BEHALF OF DEFENDANTS BUSH BOAKE ALLEN, INC. AND</p> <p>16 INTERNATIONAL FLAVORS AND FRAGRANCES, INC.</p> <p>17 Weinberg, Wheeler, Hudgins, Gunn &amp; Dial, LLC</p> <p>18 3344 Peachtree Road, Ste. 2400</p> <p>19 Atlanta, GA 30326</p> <p>20 By Thomas D. Allen, Esq.</p> <p>21</p> <p>22 ON BEHALF OF DEFENDANT SENSIENT FLAVORS LLC:</p> <p>23 Michael Best &amp; Friedrich LLP</p> <p>24 100 East Wisconsin Avenue, Ste. 3300</p> <p>Milwaukee, WI 53202-4108</p> <p>By Paul E. Benson, Esq.</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 Examination By Page</p> <p>3 Mr. Kawala - Cross 5</p> <p>4 Mr. Allen - Cross 218</p> <p>5 Mr. Benson - Cross 271</p> <p>6 Mr. Allen - Further Cross 307</p> <p>7 Mr. Benson - Further Cross 313</p> <p>8</p> <p>9 Exhibits Page</p> <p>10 Exhibit 1 - CD of Medical Records 12</p> <p>11 Exhibit 2 - CD of Medical Records 13</p> <p>12 Exhibit 3 - CD of Medical Records 13</p> <p>13 Exhibit 4 - Pulmonary Function Test 07-21-11 15</p> <p>14 Exhibit 5 - Cleveland Clinic STAR Imaging 15</p> <p>15 Final Report, 07-21-11</p> <p>16 Exhibit 6 - Blood Test Results, 07-25-11 16</p> <p>17 Exhibit 7 - Handwritten Notes 63</p> <p>18 Exhibit 8 - Independent Medical Evaluation, 89</p> <p>19 07-21-11</p> <p>20 Exhibit 9 - Physical Exam Sheet 144</p> <p>21 Exhibit 10 - New Pulmonary Patient 151</p> <p>22 Questionnaire</p> <p>23 Exhibit 11 - Amended Notice of Deposition 218</p> <p>24 Exhibit 12 - Curriculum Vitae 221</p> <p>Exhibit 13 - Deposition and Trial Testimony 273</p> <p>History</p> <p>(Exhibits 2, 7, 11, 12, 13 returned to Charles A. Pue, M.D. Exhibits 1, 3, 4, 5, 6, 8, 9, 10 returned to the Sleep and Breathing Research Institute.</p>
<p style="text-align: right;">Page 3</p> <p>1 Friday Morning Session</p> <p>2 September 13, 2013, 9:00 a.m.</p> <p>3 - - - - -</p> <p>4 S T I P U L A T I O N S</p> <p>5 - - - - -</p> <p>6 It is stipulated by counsel in attendance that</p> <p>7 the deposition of Charles A. Pue, M.D., a witness</p> <p>8 herein, called by the Defendants for</p> <p>9 cross-examination, may be taken at this time by</p> <p>10 the notary pursuant to notice that said deposition</p> <p>11 may be reduced to writing in stenotypy by the</p> <p>12 notary, whose notes may thereafter be transcribed</p> <p>13 out of the presence of the witness; that proof of</p> <p>14 the official character and qualification of the</p> <p>15 notary is waived; that the signature of the</p> <p>16 witness to the transcript of said deposition is</p> <p>17 expressly waived by counsel and the witness; said</p> <p>18 deposition to have the same force and effect as</p> <p>19 though signed by the said Charles A. Pue, M.D.</p> <p>20 - - - - -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 CHARLES A. PUE, M.D.</p> <p>2 being first duly sworn, testifies and says as</p> <p>3 follows:</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. KAWALA:</p> <p>6 Q. Would you please state your full name?</p> <p>7 A. Charles A. Pue, M.D.</p> <p>8 Q. Dr. Pue, my name is Dave Kawala. We've</p> <p>9 met before. I represent one of the defendants in</p> <p>10 a lawsuit filed by David Stults. I want to ask</p> <p>11 you about opinions you might hold regarding</p> <p>12 Mr. Stults today. Okay?</p> <p>13 A. Yes.</p> <p>14 Q. You generally know the ground rules of</p> <p>15 a deposition. Do you need me to go over them?</p> <p>16 A. No.</p> <p>17 Q. Okay. If I ask you a question that is</p> <p>18 unclear or doesn't make sense to you, please don't</p> <p>19 answer it. Please ask me to clarify.</p> <p>20 A. I will do that, yes.</p> <p>21 Q. You prepared a report of July 27th,</p> <p>22 2011?</p> <p>23 A. That's correct.</p> <p>24 Q. Have you done anything to update or</p>

<p style="text-align: right;">Page 86</p> <p>1 breath persisted.</p> <p>2 And he really went on very extensively</p> <p>3 about this because he was under the feeling that</p> <p>4 this had been mischaracterized in the past for</p> <p>5 him. He indicated to me that his a-fib was</p> <p>6 episodic and he had his baseline severe shortness</p> <p>7 of breath. When he would get the a-fib, he would</p> <p>8 then become even more impaired. And then when he</p> <p>9 was brought out of the a-fib, he was back to his</p> <p>10 baseline impairment. And he felt that because he</p> <p>11 said, yeah, it feels so much better, that people</p> <p>12 interpreted that to mean that he felt good. But</p> <p>13 he was very clear, and he wanted me to understand,</p> <p>14 he did not feel good. He just didn't feel as bad</p> <p>15 as when he had the a-fib.</p> <p>16 Q. You realize from reviewing the records</p> <p>17 that Mr. Stults' a-fib and PVC, his cardiac</p> <p>18 condition, pre-dated his lung condition, correct?</p> <p>19 A. That's correct. I had it in the</p> <p>20 records as going back as -- possibly as far back</p> <p>21 as the '80s.</p> <p>22 Q. Right. And I take it, it would be your</p> <p>23 understanding, if not your opinion, that</p> <p>24 Mr. Stults' cardiac condition is unrelated to his</p>	<p style="text-align: right;">Page 88</p> <p>1 worse.</p> <p>2 Q. Did Mr. Stults deny to you that he told</p> <p>3 Dr. Schmitt that he felt a night-and-day</p> <p>4 difference in his energy level after ablation?</p> <p>5 A. He indicated that he said that. But</p> <p>6 again, he indicated to me that he felt that that</p> <p>7 was misinterpreted meaning that he felt good, but</p> <p>8 he did not feel good by what he told me. He said</p> <p>9 he felt better because his heart was back in</p> <p>10 rhythm and the palpitations were gone. He could</p> <p>11 feel that immediately. But it was going from</p> <p>12 really bad to bad. Not bad to good.</p> <p>13 Q. Okay. If you'd go ahead with the note,</p> <p>14 please. Thank you.</p> <p>15 A. Okay. He indicated that he had started</p> <p>16 with a new pulmonologist; that his old</p> <p>17 pulmonologist had retired sometime in 2011. There</p> <p>18 was a trial of a course of Rituxan, but he</p> <p>19 indicated to me that the rheumatologist did not</p> <p>20 feel that he had lung disease from RA and</p> <p>21 therefore, no further Rituxan was given. He</p> <p>22 indicated that -- he then went on to describe some</p> <p>23 other things to me.</p> <p>24 He said after I had seen him in 2011,</p>
<p style="text-align: right;">Page 87</p> <p>1 lung condition?</p> <p>2 A. That is correct.</p> <p>3 Q. And so when Mr. Stults had the onset of</p> <p>4 his lung symptomatology in either late 2008 or</p> <p>5 early 2009, he already had this cardiac condition</p> <p>6 present?</p> <p>7 A. That's my understanding, yes.</p> <p>8 Q. And did you review the records of</p> <p>9 Mr. Stults' care through Spectrum that indicated</p> <p>10 that when he would have episodic a-fib and PVCs,</p> <p>11 that it would result in fatigue and shortness of</p> <p>12 breath?</p> <p>13 A. Yes. And what he indicated to me was</p> <p>14 that it was worsening of the fatigue and shortness</p> <p>15 of breath, not development of fatigue and</p> <p>16 shortness of breath. His symptoms that he had</p> <p>17 became worse when the a-fib occurred.</p> <p>18 Q. But the a-fib and the PVCs pre-dated</p> <p>19 the lung disease.</p> <p>20 A. That's true. He had fatigue and a-fib</p> <p>21 -- fatigue when he had a-fib. But after he</p> <p>22 developed the lung disease, he had a baseline</p> <p>23 shortness of breath all the time and a baseline</p> <p>24 fatigue that, when he was in a-fib, was even</p>	<p style="text-align: right;">Page 89</p> <p>1 he had talked more with his wife, and they had</p> <p>2 gone more through their history of when he was</p> <p>3 exposed to microwave popcorn. And he indicated</p> <p>4 that they started eating microwave popcorn when</p> <p>5 they were dating in 1987 into 1988. And he</p> <p>6 indicated to me that he had spoken to people that</p> <p>7 he used to work with at Quest Diagnostics, and</p> <p>8 that they remembered him eating microwave popcorn</p> <p>9 pretty regularly. And he told me that he worked</p> <p>10 there, I think in 1990.</p> <p>11 He stated that they continued the two</p> <p>12 bags a day until 2007, which I believe in my</p> <p>13 report -- do you still have my report?</p> <p>14 Q. Yes, your report --</p> <p>15 A. No, I have it back.</p> <p>16 Q. In your report it says 2004.</p> <p>17 A. I have 2004. He indicated --</p> <p>18 MR. ALLEN: I'm sorry, did we mark</p> <p>19 that?</p> <p>20 MR. KAWALA: No, I didn't. Let's mark</p> <p>21 your report as Exhibit 8, Doctor.</p> <p>22 -----</p> <p>23 Thereupon, Exhibit 8 is marked for</p> <p>24 purposes of identification.</p>

<p style="text-align: right;">Page 90</p> <p>1           -----</p> <p>2           THE WITNESS: All right. Yes, in my</p> <p>3 original report he had told me from 1991 to 2004,</p> <p>4 and so when I was talking with him on the phone,</p> <p>5 he said his wife had indicated they started in '87</p> <p>6 or '88, somewhere in that range when they started</p> <p>7 dating.</p> <p>8           And then on page 2, he said they</p> <p>9 continued two bags a day until 2007. His wife and</p> <p>10 he had decided that from 2007 until May of 2010,</p> <p>11 they had decreased to one bag per day. And the</p> <p>12 reason he remembered May of 2010 is the date was</p> <p>13 that's when they moved.</p> <p>14 BY MR. KAWALA:</p> <p>15 Q.       Okay. Let me interrupt you here</p> <p>16 because this is all new and interesting.</p> <p>17           MR. ALLEN: But not surprising.</p> <p>18 Q.       You took a history from Mr. Stults when</p> <p>19 he came to see you in 2011?</p> <p>20 A.       That's correct.</p> <p>21 Q.       And why did you take a history?</p> <p>22 A.       Why do I take a history?</p> <p>23 Q.       Yes.</p> <p>24 A.       That's how I obtain information from</p>	<p style="text-align: right;">Page 92</p> <p>1   somebody is giving you two different stories?</p> <p>2 A.       Stories evolve, yes. People remember</p> <p>3 things. They get other information. You know,</p> <p>4 trying to ask somebody a specific question from</p> <p>5 10, 15 years ago, sometimes they're off.</p> <p>6 Q.       Sometimes histories are inaccurate?</p> <p>7 A.       Sometimes they are.</p> <p>8 Q.       Sometimes memories change?</p> <p>9 A.       Sometimes they do.</p> <p>10 Q.       Did you believe that the history that</p> <p>11 Mr. Stults gave you in 2011, that he had consumed</p> <p>12 microwave popcorn from 1991 to 2004 at a</p> <p>13 two-bag-per-day rate was an accurate history?</p> <p>14 A.       That was as accurate a history as I</p> <p>15 could obtain from him at that time, yes.</p> <p>16 Q.       Did Mr. Stults, when he gave you that</p> <p>17 history, indicate that he was uncertain of that</p> <p>18 history or thought that the -- that he needed to</p> <p>19 do more research or do more investigation to come</p> <p>20 up with an accurate history?</p> <p>21 A.       He didn't say anything to me at that</p> <p>22 time about that, no.</p> <p>23 Q.       So when you wrote your independent</p> <p>24 medical evaluation in July of 2011, you believed</p>
<p style="text-align: right;">Page 91</p> <p>1 people.</p> <p>2 Q.       And why do you take a history in a case</p> <p>3 of someone like Mr. Stults to find out about</p> <p>4 microwave popcorn consumption?</p> <p>5 A.       Because he had potentially microwave</p> <p>6 popcorn-related lung disease. So that was</p> <p>7 important in the history. Also asking him about</p> <p>8 other exposures, chemicals, jobs, all kinds of</p> <p>9 things.</p> <p>10 Q.       And you assume that the history</p> <p>11 Mr. Stults is giving you is complete and accurate,</p> <p>12 correct?</p> <p>13 A.       That's all that I can go by is what</p> <p>14 people provide to me.</p> <p>15 Q.       Correct.</p> <p>16 A.       Correct.</p> <p>17 Q.       And so if Mr. Stults had had a history</p> <p>18 of chemical exposures or worked around chemicals</p> <p>19 or things like that, you're expecting that he's</p> <p>20 going to give you that information?</p> <p>21 A.       I expect that people will give me what</p> <p>22 they're aware, what they remember. Stories change</p> <p>23 at times.</p> <p>24 Q.       Stories change, which means that then</p>	<p style="text-align: right;">Page 93</p> <p>1 that the history that Mr. Stults gave you was</p> <p>2 complete and accurate?</p> <p>3 A.       Yes.</p> <p>4 Q.       And you based your opinions on that?</p> <p>5 A.       Yes.</p> <p>6 Q.       Do you have any independent</p> <p>7 verification that Mr. Stults consumed microwave</p> <p>8 popcorn from 1991 to 2004 besides what he told</p> <p>9 you?</p> <p>10 A.       No, I do not.</p> <p>11 Q.       Have you spoke to anyone else, person</p> <p>12 to person, that has told you they saw Mr. Stults</p> <p>13 eat microwave popcorn at any time?</p> <p>14 A.       No, I have not.</p> <p>15 Q.       Have you seen any contemporaneous</p> <p>16 records between 1991 and 2004 that indicate</p> <p>17 Mr. Stults told anyone or it was noted that</p> <p>18 Mr. Stults consumed popcorn at this rate?</p> <p>19 A.       I have no independent information for</p> <p>20 that.</p> <p>21 Q.       Would it be correct to say, Dr. Pue,</p> <p>22 that the only information you have that Mr. Stults</p> <p>23 consumed microwave popcorn at all is from</p> <p>24 Mr. Stults?</p>

<p style="text-align: right;">Page 94</p> <p>1 A. That is correct.</p> <p>2 Q. And if I understand what you're telling</p> <p>3 me is earlier this week you called Mr. Stults and</p> <p>4 he gave you a different history as to his</p> <p>5 consumption of microwave popcorn, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. He changed the date in which he started</p> <p>8 his consumption of popcorn from 1991 to 1987?</p> <p>9 A. Correct. He said '87 or '88. I want</p> <p>10 to be clear on that. I remember him saying that.</p> <p>11 Q. All right.</p> <p>12 A. Because that was when he started dating</p> <p>13 his wife.</p> <p>14 Q. Okay. Do you believe that Mr. Stults</p> <p>15 recalled when he was dating his wife when he saw</p> <p>16 you back in July of 2011?</p> <p>17 A. Say that one more time.</p> <p>18 Q. Do you believe that when Mr. Stults</p> <p>19 visited you in July of 2007, he knew when he</p> <p>20 started to date his wife?</p> <p>21 A. I'm assuming he knew that, but I can't</p> <p>22 guess that.</p> <p>23 Q. All right. Mr. Stults, in his initial</p> <p>24 evaluation, told you that he started this habit of</p>	<p style="text-align: right;">Page 96</p> <p>1 a day. What he indicated to me, they were doing</p> <p>2 two bags a night after the baby was born. The</p> <p>3 information he gave me the other day was that they</p> <p>4 had started eating microwave popcorn when they</p> <p>5 started dating, but I don't think it was to the</p> <p>6 degree that it was in 1991.</p> <p>7 Q. How much microwave popcorn did</p> <p>8 Mr. Stults tell you he was consuming between '88</p> <p>9 and -- '87/'88 and 1991?</p> <p>10 A. At that point he indicated it was just</p> <p>11 more occasional in the beginning. It wasn't an</p> <p>12 every day event in '87/'88. And they gradually</p> <p>13 increased. And then in 2001 was when they had the</p> <p>14 ritual of every night popping popcorn and watching</p> <p>15 movies after they put the baby to bed.</p> <p>16 Q. Did you ask Mr. Stults whether he</p> <p>17 actually had an independent recollection of</p> <p>18 consuming microwave popcorn between '87 and '91 or</p> <p>19 if that's just what his wife told him?</p> <p>20 A. I'm trying to remember the exact words</p> <p>21 he used. I think he said, my wife reminded me</p> <p>22 that we had been eating popcorn when we started</p> <p>23 dating before we had the baby. So that was the</p> <p>24 term he used, his wife had reminded him. He had</p>
<p style="text-align: right;">Page 95</p> <p>1 consuming popcorn every night with his wife</p> <p>2 because that was the year his daughter was born.</p> <p>3 A. That's what he had indicated to me at</p> <p>4 that time, yes.</p> <p>5 Q. And that was obviously a landmark event</p> <p>6 in his life and one that he could correlate that</p> <p>7 activity to her birth?</p> <p>8 A. That's what he indicated to me, yes.</p> <p>9 Q. So when he gave you his statement or</p> <p>10 his history at the time of his evaluation, he</p> <p>11 keyed it to the birth of his daughter?</p> <p>12 A. That's what he told me, yes.</p> <p>13 Q. When you spoke to him a few days ago,</p> <p>14 he keyed the beginning of his consumption of</p> <p>15 microwave popcorn to when he began dating his</p> <p>16 wife?</p> <p>17 A. That's correct. That's what he told</p> <p>18 me.</p> <p>19 Q. Did you ask Mr. Stults why his history</p> <p>20 changed?</p> <p>21 A. Well, as I stated earlier, he states</p> <p>22 that after he had seen me, he had talked more with</p> <p>23 his wife and they had gone back and thought more</p> <p>24 about it. I don't think they were doing two bags</p>	<p style="text-align: right;">Page 97</p> <p>1 forgotten about that.</p> <p>2 Q. So it was your understanding that his</p> <p>3 wife just -- did he tell you when his wife</p> <p>4 reminded him of that?</p> <p>5 A. No. I didn't ask him that.</p> <p>6 Q. Are you aware that Mr. Stults gave</p> <p>7 sworn deposition testimony in this case?</p> <p>8 A. I haven't read his deposition.</p> <p>9 Q. But --</p> <p>10 A. I wasn't aware that --</p> <p>11 Q. -- I guess you could surmise we took</p> <p>12 his dep.</p> <p>13 A. Yeah.</p> <p>14 Q. Do you have any knowledge of what</p> <p>15 history Mr. Stults gave in that deposition?</p> <p>16 A. No.</p> <p>17 Q. So as you understood Mr. Stults' recent</p> <p>18 communication with you last Tuesday, he told you</p> <p>19 his wife reminded him that he ate microwave</p> <p>20 popcorn from '87/'88 to '91?</p> <p>21 A. Correct. Basically he indicated to me</p> <p>22 that it wasn't like they were never eating popcorn</p> <p>23 before and then suddenly they started eating two</p> <p>24 bags a night in 1991. They had -- they were</p>

<p style="text-align: right;">Page 98</p> <p>1 eating microwave popcorn together from when they 2 got together. 3 Q. Okay. And that would indicate to you 4 that the original history that Mr. Stults gave in 5 July of 1991 was inaccurate? 6 A. You might use the word "inaccurate." 7 I'd say "incomplete." 8 Q. Did it concern you that now, more than 9 two years after your initial evaluation, that the 10 history of microwave popcorn consumption was 11 changing in this case? 12 MR. HALL: Object to the form. 13 A. I don't draw any judgment on it. I was 14 talking to him. I asked him -- he just gave me 15 information. I documented what was given to me. 16 Q. Did Mr. Stults ask his wife whether or 17 not he had had any history of chemical exposures 18 that he couldn't remember that she could? 19 A. I can't speculate on what he asked his 20 wife. 21 Q. Mrs. Stults is a plaintiff in this 22 lawsuit. You're aware of that? 23 A. I didn't know that specifically. 24 Usually that is the case.</p>	<p style="text-align: right;">Page 100</p> <p>1 about a history of consuming microwave popcorn 2 that went up to and through 2004, correct? 3 A. Correct. 4 Q. If Mr. Stults' consumption of microwave 5 popcorn had ended in 2004, as he told you in July 6 of 2011, would you expect that the onset of 7 symptoms and signs of lung disease would have 8 occurred within three years thereafter? 9 A. I mean, I don't know that we know 10 enough about the disease to say what the latency 11 period is completely. I mean, most patients 12 present within a shorter period of time than the 13 time frame you just presented. But I don't know 14 that we can't say that someone could have a more 15 latent -- more latency than that. 16 Q. Most -- most patients that you've seen 17 actually are still consuming microwave popcorn at 18 the time that their signs and symptoms onset. Is 19 that true? 20 A. That is true. 21 Q. Okay. Are you aware of any medical 22 literature where it suggests that somebody can end 23 their consumption of microwave popcorn and have no 24 symptoms for almost five years?</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. Besides the two people that are 2 plaintiffs in this lawsuit, Mr. Stults and his 3 wife, do you know of anybody who can corroborate 4 any of the claims that Mr. and now Mrs. Stults are 5 making to you about his consumption of microwave 6 popcorn? 7 A. I took the history. I don't have any 8 independent information with regard to that. 9 Q. Was Mrs. Stults with David when he came 10 to see you for the exam? 11 A. Typically if a spouse is present, I 12 will comment on that. And I did not comment that 13 she was present for the evaluation. 14 Q. Did you have any concern of doing the 15 physical examination of David Stults, that he was 16 going to be fatigued or tired because he had 17 traveled to see you? 18 A. No. 19 Q. Okay. Let's talk about the -- the 20 other -- the other side of the equation. 21 Mr. Stults told you when he gave you 22 the history in July of 2011 that his -- strike 23 that. 24 Mr. Stults told you in July of 2011</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. HALL: Object to the form. Assumes 2 he had no symptoms. 3 But go ahead. 4 Q. Okay. Well, let's clear that one up. 5 Based upon your review of the medical 6 records, did you see any signs -- signs, symptoms 7 or complaints by Mr. Stults that you would relate 8 to his exposure to diacetyl before -- before late 9 2008? 10 A. I did not. 11 Q. So if Mr. Stults ended his microwave 12 popcorn consumption in 2004 and had no signs and 13 symptoms -- or symptoms of lung damage until late 14 2008, would that fact argue against the cause of 15 his lung disease being diacetyl? 16 A. No, it would not because when he 17 presented, his first lung functions were 50 18 percent, if I remember correctly. They were 19 severely impaired. That doesn't just happen 20 overnight. His FEV1, I think, was 45 percent or 21 something like that. 22 Q. I believe it was 51. 23 A. So 51 percent. So that's not something 24 that happens in just a few months or a year.</p>



<p style="text-align: right;">Page 102</p> <p>1 That's something that progresses over several</p> <p>2 years. Five to seven years it could be.</p> <p>3 Q. But it was measured three -- three</p> <p>4 months later in June, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And it had fallen 18 percent?</p> <p>7 A. Correct.</p> <p>8 Q. Fallen to 31 or 32 percent.</p> <p>9 A. Right.</p> <p>10 Q. So there's an 18 percent drop in three</p> <p>11 months.</p> <p>12 A. Um-hmm.</p> <p>13 Q. So --</p> <p>14 A. And it was a little better a few months</p> <p>15 later. I mean, he was in that period. I don't</p> <p>16 know what his curve was.</p> <p>17 Q. Are you aware of any medical literature</p> <p>18 that supports the fact that someone who has not</p> <p>19 been exposed to diacetyl for a period of over four</p> <p>20 years would first, thereafter, have signs or</p> <p>21 symptoms of lung damage four plus years later?</p> <p>22 Have you ever seen that?</p> <p>23 A. I have not seen that published yet.</p> <p>24 Q. And have you ever seen a patient you</p>	<p style="text-align: right;">Page 104</p> <p>1 statement is that I can't specifically identify</p> <p>2 anyone that has that more-than-four-year gap as</p> <p>3 you're asking.</p> <p>4 Q. Did it concern you, when you wrote your</p> <p>5 report in 2011, that Mr. Stults gave you a history</p> <p>6 that he was last exposed in 2004, but didn't have</p> <p>7 any symptoms until the fall of 2008. Was that</p> <p>8 something that concerned you?</p> <p>9 A. No, because my concern with him was</p> <p>10 that he was so severely impaired when he</p> <p>11 presented, he -- he strikes me as a -- he was so</p> <p>12 fit leading up -- this guy was a very, very active</p> <p>13 guy for so many years, that a lot of people</p> <p>14 compensate for long periods of time and can find</p> <p>15 ways around dealing with their shortness of breath</p> <p>16 and their decreasing performance status until they</p> <p>17 get down to 50 percent lung function.</p> <p>18 So this could have been evolving for</p> <p>19 several years.</p> <p>20 Q. And in this particular case, do you</p> <p>21 have any PFT results on Mr. Stults before March of</p> <p>22 2009?</p> <p>23 A. I do not.</p> <p>24 Q. And do you have any expert opinions as</p>
<p style="text-align: right;">Page 103</p> <p>1 can tell me of who came to see you and said the</p> <p>2 last time I was exposed to diacetyl in microwave</p> <p>3 popcorn was more than four years -- strike that.</p> <p>4 Are you aware of any patient who had</p> <p>5 more than a four-year gap between their last</p> <p>6 exposure to diacetyl and first onset of signs,</p> <p>7 symptoms or complaints of lung damage related to</p> <p>8 that exposure?</p> <p>9 A. Not that I recall.</p> <p>10 Q. So would you agree with me that based</p> <p>11 upon the published literature and all of your</p> <p>12 experience in seeing probably over what, 200</p> <p>13 patients?</p> <p>14 A. Approaching.</p> <p>15 Q. You have never seen anybody with a</p> <p>16 four-year gap of their last exposure and the first</p> <p>17 onset of their symptomatology?</p> <p>18 A. I'm trying to remember time frames on</p> <p>19 all the patients. I don't know if that's 100</p> <p>20 percent accurate.</p> <p>21 Q. Then tell me about the patient that had</p> <p>22 a four-year gap.</p> <p>23 A. Give me a minute.</p> <p>24 I think I will go back to my previous</p>	<p style="text-align: right;">Page 105</p> <p>1 to when Mr. Stults first began to lose lung</p> <p>2 function due to his exposure to diacetyl?</p> <p>3 A. I can't give you the exact date that</p> <p>4 that occurred.</p> <p>5 Q. Can you give me a year?</p> <p>6 A. It had to have been going on for</p> <p>7 several years.</p> <p>8 Q. And why do you say it had to have been</p> <p>9 going on for several years?</p> <p>10 A. His degree of pulmonary impairment, in</p> <p>11 my opinion, far exceeds what would have happened</p> <p>12 in just a year or two.</p> <p>13 Q. Would it have exceeded what would have</p> <p>14 happened in three years?</p> <p>15 A. It's starting to get up into three-,</p> <p>16 four-, five-year range.</p> <p>17 Q. Can you point to me a single -- a</p> <p>18 single patient -- strike that.</p> <p>19 I think we have already established you</p> <p>20 can't bring to mind a single patient that had a</p> <p>21 four-year gap between their last exposure and the</p> <p>22 onset of symptoms.</p> <p>23 A. My gut tells me there's been some, but</p> <p>24 I can't come up with a specific patient, so I have</p>

<p style="text-align: right;">Page 110</p> <p>1 A. That was what he indicated to me, yes.</p> <p>2 Q. So as far as the patient's history</p> <p>3 goes, history of symptoms, there were none until</p> <p>4 late 2008?</p> <p>5 A. That's what he indicated to me, yes.</p> <p>6 Q. Okay. Let's talk about the other side</p> <p>7 of the equation, which is the history of</p> <p>8 consumption after 2004.</p> <p>9 Mr. Stults indicated to you that he</p> <p>10 continued eating two bags a day through 2007 in</p> <p>11 your recent phone conversation?</p> <p>12 A. That's what he told me, yes.</p> <p>13 Q. And what was Mr. Stults' source of that</p> <p>14 information that he -- that he consumed two bags a</p> <p>15 day from '04 to '07?</p> <p>16 A. Again, he indicated that after</p> <p>17 discussing it more with his wife, that's what they</p> <p>18 determined was the accurate estimate.</p> <p>19 Q. Did he indicate that that's what he</p> <p>20 determined, that's what she determined or that</p> <p>21 this was a joint venture?</p> <p>22 A. I don't know specifically.</p> <p>23 Q. Did Mr. Stults tell you that he had</p> <p>24 gone on the internet and done a search of various</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. I'm probably leaving out a few</p> <p>2 prefatory questions.</p> <p>3 Mr. Stults calls you up and says, I</p> <p>4 need to change the history, correct?</p> <p>5 A. No, that's not what happened. I called</p> <p>6 him because I hadn't seen him in two years. And I</p> <p>7 called Mr. Hall and said, can I call and talk to</p> <p>8 him because it's been two years since I talked to</p> <p>9 him.</p> <p>10 Q. I get that part of it. But you didn't</p> <p>11 go back to Mr. Stults and say, you told me before</p> <p>12 the exposure was '91 to 2004, do you want to</p> <p>13 change that. You didn't say that.</p> <p>14 A. No, I didn't ask him that.</p> <p>15 Q. He volunteered to you in the course of</p> <p>16 the conversation that he had additional exposure</p> <p>17 after 2004.</p> <p>18 A. Correct.</p> <p>19 Q. So he volunteered to you that he</p> <p>20 evidently knew or was otherwise aware that he had</p> <p>21 given you a history of stopping in 2004, but he</p> <p>22 wanted to indicate that history was wrong?</p> <p>23 A. That wasn't exactly what he said, but</p> <p>24 that's -- that's about it, yes. He said to me, I</p>
<p style="text-align: right;">Page 111</p> <p>1 microwave popcorn websites with his wife?</p> <p>2 A. I don't remember that, no.</p> <p>3 Q. Did you ask Mr. Stults why he had</p> <p>4 failed to tell you of this history of consuming</p> <p>5 microwave popcorn at two bags a day from '04 to</p> <p>6 '07 when you saw him in July of '11?</p> <p>7 A. He indicated to me that he just felt</p> <p>8 that he had the dates wrong.</p> <p>9 Q. Any other explanation other than that?</p> <p>10 A. No. He just felt that he had</p> <p>11 underestimated it.</p> <p>12 Q. Did you send Mr. Stults a copy of your</p> <p>13 independent medical evaluation?</p> <p>14 A. No, I did not. I send it to the</p> <p>15 attorneys. Now, if he got it from his attorney,</p> <p>16 that's how he would have it. But it wouldn't be</p> <p>17 from me.</p> <p>18 Q. Okay. So did he tell you he had read</p> <p>19 your report?</p> <p>20 A. No.</p> <p>21 Q. So how is it, if you know, that</p> <p>22 Mr. Stults was even -- even -- how did Mr. Stults</p> <p>23 even recall what history he gave you?</p> <p>24 A. Ask me the question again.</p>	<p style="text-align: right;">Page 113</p> <p>1 need to correct what I told you or I need to give</p> <p>2 you -- let me think of the words he used. It was</p> <p>3 just a couple days ago.</p> <p>4 I think he said, the more that I</p> <p>5 thought about it and I talked to my wife about it,</p> <p>6 I need to change what I told you before. And then</p> <p>7 he told me what the exposure was, starting earlier</p> <p>8 and after. So he -- from what you tell me, if he</p> <p>9 had a copy of the report, then he would have seen</p> <p>10 what I put in the report. But I didn't -- he</p> <p>11 didn't tell me he had seen it in my report.</p> <p>12 Q. So the way he explained it to you was</p> <p>13 that he had thought about it more and he had</p> <p>14 talked to his wife?</p> <p>15 A. Yes.</p> <p>16 Q. Did he tell you that as he thought</p> <p>17 about it more, his memory of this additional</p> <p>18 exposure came to mind?</p> <p>19 A. Yes.</p> <p>20 Q. Did Mr. Stults tell you that his memory</p> <p>21 seemed to be functioning pretty well?</p> <p>22 MR. HALL: Object to the form.</p> <p>23 A. I'm not sure what you mean by the</p> <p>24 question.</p>



<p style="text-align: right;">Page 118</p> <p>1 disease process.</p> <p>2 Q. Okay. But all other things being equal</p> <p>3 in this case, if somebody came in and told you, I</p> <p>4 have the onset of signs and symptoms associated</p> <p>5 with bronchiolitis obliterans within one year</p> <p>6 after I was last exposed to microwave popcorn as</p> <p>7 opposed to four years, a four-year gap, wouldn't</p> <p>8 your suspicion that diacetyl was the cause be</p> <p>9 stronger in the case of the person who had only</p> <p>10 had the one-year gap versus a four-year gap?</p> <p>11 MR. HALL: Same objection.</p> <p>12 A. The -- as previously stated, with the</p> <p>13 association, it depends on the patient, it depends</p> <p>14 on the severity of disease. If you're giving me</p> <p>15 patients with severe impairment, that longer</p> <p>16 period of time could be very reasonable.</p> <p>17 Q. It could be. But I think you told us</p> <p>18 already you're not aware of any literature or any</p> <p>19 patient you've ever seen that presented with a</p> <p>20 four-year gap, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. You're aware of patients that have</p> <p>23 complained or have had a one-year gap between</p> <p>24 their last exposure to microwave popcorn and their</p>	<p style="text-align: right;">Page 120</p> <p>1 that, although they still did use it occasionally</p> <p>2 until January of 2011.</p> <p>3 Q. Okay. Just so I get these numbers</p> <p>4 right. From '07 to May of '10, it was one bag</p> <p>5 almost every night.</p> <p>6 A. That is what he told me, yes.</p> <p>7 Q. Then from May of '10 to January of '11,</p> <p>8 it was --</p> <p>9 A. Just occasionally. He said very -- you</p> <p>10 know, like -- from what he indicated to me, it was</p> <p>11 not a frequent occurrence. It wasn't something</p> <p>12 they did regularly in the new house. They had it</p> <p>13 and they maybe had one occasionally. But it</p> <p>14 wasn't something they did regularly.</p> <p>15 Q. Can you -- once a week? Once a month?</p> <p>16 A. The impression he gave me, it was a</p> <p>17 once-a-week, once-a-month kind of thing. It</p> <p>18 wasn't something they did -- definitely not</p> <p>19 something they were doing every day.</p> <p>20 Q. So the history that Mr. Stults -- and</p> <p>21 as to the history of Mr. Stults consuming</p> <p>22 microwave popcorn from May 2010 through January</p> <p>23 2011, did Mr. Stults tell you that he came to that</p> <p>24 memory? How he recalled that new exposure?</p>
<p style="text-align: right;">Page 119</p> <p>1 onset of signs and symptoms of bronchiolitis</p> <p>2 obliterans?</p> <p>3 A. That's true.</p> <p>4 Q. And that one-year gap is supported not</p> <p>5 only by your experience, but by the literature?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And then Mr. Stults told you</p> <p>8 that from 2007 going forward, how much did he tell</p> <p>9 you he consumed?</p> <p>10 A. He said they decreased to about a bag</p> <p>11 per day. And I said every day? He said about</p> <p>12 90 percent of the time.</p> <p>13 Q. So from what period to what period,</p> <p>14 please?</p> <p>15 A. From '07 to May of 2010 when they</p> <p>16 moved.</p> <p>17 Q. Okay. So now it's keyed to the moving</p> <p>18 of the house.</p> <p>19 A. Correct. So the ritual of two bags</p> <p>20 every night decreased in 2007 to one bag. And he</p> <p>21 said it wasn't every night, but it was about 90</p> <p>22 percent of the time, from '07 to May of 2010. He</p> <p>23 said they moved in May of 2010 and they didn't</p> <p>24 continue to regularly eat microwave popcorn after</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Ask me again so I make sure I get the</p> <p>2 dates right on your question.</p> <p>3 Q. Yes. What I'm trying to do is I'm just</p> <p>4 trying to break this down, Doctor.</p> <p>5 We already talked about the fact that</p> <p>6 from 2004 to 2007, Mr. Stults now claims that he</p> <p>7 ate two bags or was exposed to two bags daily,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. From 2007, now, to May 2010, let</p> <p>11 me ask you about that segment of time.</p> <p>12 A. Okay.</p> <p>13 Q. From May 2007 to May -- from 2007 to</p> <p>14 May of 2010, Mr. Stults now claims that he had one</p> <p>15 bag almost every night.</p> <p>16 A. That's what he indicated to me.</p> <p>17 Q. And did Mr. Stults indicate to you what</p> <p>18 was the source of his knowledge or information</p> <p>19 that he was consuming popcorn at an</p> <p>20 almost-one-bag-a-night rate from '07 to May of</p> <p>21 2010?</p> <p>22 A. This was all taken as part of the same</p> <p>23 history. So it goes back to the history he made</p> <p>24 at the very beginning. I didn't ask about each</p>

<p style="text-align: right;">Page 122</p> <p>1 segment, how he defined that one.</p> <p>2 Q. Okay. So it would have been two</p> <p>3 components, he thought about it some more and he</p> <p>4 spoke to his wife.</p> <p>5 A. Correct.</p> <p>6 Q. Did you ever ask to speak to his wife</p> <p>7 about -- to corroborate her recollections as</p> <p>8 reflected by Mr. Stults in this Tuesday</p> <p>9 conversation?</p> <p>10 A. No, I did not.</p> <p>11 Q. Have you looked -- have you seen the</p> <p>12 report of Dr. Egilman?</p> <p>13 A. No, I have not.</p> <p>14 Q. Have you seen the report of Dr. Parmet?</p> <p>15 A. No, I have not.</p> <p>16 MR. HALL: Object to the form. Asked</p> <p>17 and answered on both.</p> <p>18 Q. Have you seen the report of</p> <p>19 Dr. Swenson?</p> <p>20 A. I have not.</p> <p>21 Q. Have you seen the report of</p> <p>22 Mr. Ostrander?</p> <p>23 A. I'm not sure who Mr. Ostrander is.</p> <p>24 Q. He's a voc guy from one of the Dakotas.</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. HALL: Object to the form. That's</p> <p>2 already been asked and answered and he's given you</p> <p>3 his answer. I know you want to try to get him to</p> <p>4 say something different, but...</p> <p>5 MR. ALLEN: Object to the speaking</p> <p>6 objection.</p> <p>7 MR. HALL: It would be good -- this</p> <p>8 deposition would be over quicker if you'd stop</p> <p>9 asking the same questions over and over.</p> <p>10 MR. ALLEN: Object to the speech.</p> <p>11 MR. KAWALA: This is all new exposure</p> <p>12 history, Scott.</p> <p>13 MR. HALL: That doesn't excuse the same</p> <p>14 questions being asked over and over, okay, and</p> <p>15 that's being done.</p> <p>16 MR. KAWALA: I'm sorry I'm not more --</p> <p>17 MR. HALL: That's been done on multiple</p> <p>18 occasions. So I'm just trying to --</p> <p>19 MR. KAWALA: I want to apologize to you</p> <p>20 for that. I want to apologize that now that we've</p> <p>21 introduced another ten years of exposure to the</p> <p>22 record, that I didn't find out until halfway into</p> <p>23 this deposition --</p> <p>24 MR. HALL: That's not true.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. No.</p> <p>2 MR. ALLEN: Mr. Stults can't work</p> <p>3 because of his memory.</p> <p>4 Q. Are you aware of the fact that</p> <p>5 Mr. Stults has given a different history of</p> <p>6 microwave popcorn consumption to those experts</p> <p>7 than you?</p> <p>8 A. Well, as I stated, I haven't seen the</p> <p>9 reports so I don't know what history he gave to</p> <p>10 other people. The only history that I'm providing</p> <p>11 to you today is the history that he gave to me</p> <p>12 directly.</p> <p>13 Q. Are you aware that he gave none of the</p> <p>14 plaintiff's experts the same history, that he gave</p> <p>15 all of them different dates?</p> <p>16 A. As I just stated a moment ago, I</p> <p>17 haven't seen any of the other reports and I don't</p> <p>18 know what other history he gave to anybody else.</p> <p>19 MR. HALL: That mischaracterizes, by</p> <p>20 the way, the history, but go ahead.</p> <p>21 Q. Did it concern you, Dr. Pue, that now</p> <p>22 two years after you had seen Mr. Stults, he calls</p> <p>23 you back -- or you call him back and he volunteers</p> <p>24 additional exposure history after 2004?</p>	<p style="text-align: right;">Page 125</p> <p>1 MR. KAWALA: -- that I'm not better</p> <p>2 prepared to address it.</p> <p>3 MR. HALL: Your math is a little off.</p> <p>4 That is not another ten years.</p> <p>5 MR. KAWALA: Well, we've got four years</p> <p>6 from '87 to '91, there's four.</p> <p>7 MR. HALL: Which you knew about in the</p> <p>8 deposition, so that's not new to you.</p> <p>9 MR. BENSON: Then 2004 to 2010, that's</p> <p>10 six, so I got an extra decade to deal with.</p> <p>11 MR. HALL: Okay. That's not true.</p> <p>12 But go ahead.</p> <p>13 BY MR. KAWALA:</p> <p>14 Q. Did Mr. Stults describe to you, when he</p> <p>15 talked to you on Tuesday, an additional 10 or 11</p> <p>16 years of exposure to microwave popcorn than he had</p> <p>17 told you originally?</p> <p>18 A. Yes.</p> <p>19 Q. Four years on the backside and six or</p> <p>20 seven years on the front side.</p> <p>21 MR. HALL: That's not true.</p> <p>22 MR. ALLEN: Now you're testifying</p> <p>23 again.</p> <p>24 MR. HALL: It's '87 to '91, do the</p>

<p style="text-align: right;">Page 126</p> <p>1 math.</p> <p>2 MR. KAWALA: That's four years.</p> <p>3 MR. HALL: You said six years.</p> <p>4 MR. KAWALA: Six years is later, Scott,</p> <p>5 '04 to '10. That's six years.</p> <p>6 MR. ALLEN: I'd like the witness's</p> <p>7 testimony.</p> <p>8 MR. HALL: And can you stop making</p> <p>9 these speeches? That's about the fifth time</p> <p>10 you've made --</p> <p>11 MR. ALLEN: You're testifying under</p> <p>12 oath. You keep testifying and you know it's</p> <p>13 inappropriate.</p> <p>14 MR. HALL: You're sitting over there</p> <p>15 making these nasty comments as Dr. Pue is</p> <p>16 testifying and it's getting a little old. Just</p> <p>17 sit over there and be quiet. You'll have a chance</p> <p>18 to ask your questions --</p> <p>19 MR. ALLEN: I'm just preserving the</p> <p>20 record.</p> <p>21 MR. HALL: -- and then you can bring</p> <p>22 out his testimony however you want. But let's not</p> <p>23 make these inappropriate comments.</p> <p>24 MR. ALLEN: Will you stop testifying,</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Do you have any obligation to exercise</p> <p>2 any judgment or scrutiny as to what information</p> <p>3 that was given to you originally was incomplete?</p> <p>4 MR. HALL: Object to the form.</p> <p>5 Essentially the same question again.</p> <p>6 A. I felt when I talked to him, he gave me</p> <p>7 satisfactory reasoning as to why he was giving me</p> <p>8 different information.</p> <p>9 Q. The information Mr. Stults gave you</p> <p>10 three or four days ago was an increase in his</p> <p>11 exposure history, correct?</p> <p>12 A. That is true, yes.</p> <p>13 Q. And you would agree with me that</p> <p>14 exposure to diacetyl in microwave popcorn does</p> <p>15 involve a dose-duration relationship?</p> <p>16 A. There's a dose-duration relationship,</p> <p>17 but there's also -- I believe it's documented</p> <p>18 about the peak levels, as well.</p> <p>19 Q. Well, let me go at it this way: Would</p> <p>20 you agree with me, Doctor, that there are levels</p> <p>21 of exposure to microwave popcorn, diacetyl in</p> <p>22 microwave popcorn, by inhalation that do not</p> <p>23 result in any lung injury or damage?</p> <p>24 A. I don't know that anyone has defined</p>
<p style="text-align: right;">Page 127</p> <p>1 then?</p> <p>2 MR. HALL: Go ahead, Dave.</p> <p>3 MR. ALLEN: Will you stop testifying?</p> <p>4 MR. HALL: Go ahead, Dave.</p> <p>5 MR. ALLEN: Okay. So the answer is no.</p> <p>6 MR. KAWALA: Let's keep going.</p> <p>7 BY MR. KAWALA:</p> <p>8 Q. So here's my question, Doctor: Were</p> <p>9 you concerned that Mr. Stults, when you spoke to</p> <p>10 him just last Tuesday, what was that, three or</p> <p>11 four days ago, provided you with another 10 or 11</p> <p>12 years of microwave popcorn consumption history</p> <p>13 that he had never provided to you before?</p> <p>14 MR. HALL: Object to form. That's the</p> <p>15 third or fourth time you've asked that question.</p> <p>16 But go ahead.</p> <p>17 A. You asked if I was concerned.</p> <p>18 Concerned requires me to be passing judgment. I</p> <p>19 wasn't drawing any judgment. I just was asking --</p> <p>20 I was just talking to him and this is information</p> <p>21 he gave me. I'm a conduit to collect information</p> <p>22 and to -- and to document it and then use that</p> <p>23 information to draw conclusions. But I don't</p> <p>24 judge what's being given to me.</p>	<p style="text-align: right;">Page 129</p> <p>1 the exact safe levels of diacetyl inhalation.</p> <p>2 Q. But there are safe levels, correct?</p> <p>3 A. I don't know what they are.</p> <p>4 Q. If I told you Mr. Stults had consumed</p> <p>5 one bag of microwave popcorn and had been exposed</p> <p>6 to diacetyl fumes and then later you found out he</p> <p>7 had lung damage, namely BO, would you attribute</p> <p>8 that cause to one bag of exposure?</p> <p>9 A. I wouldn't -- likely not, no.</p> <p>10 Q. Because that would be within the</p> <p>11 threshold or under the level at which common sense</p> <p>12 and medical literature would indicate no injury</p> <p>13 occurs?</p> <p>14 MR. HALL: Object to the form. He</p> <p>15 already stated there is no safe level. Now you're</p> <p>16 trying to get him to state there is.</p> <p>17 A. I'm not even sure what the question was</p> <p>18 now.</p> <p>19 Q. Okay. Let me try to rephrase it.</p> <p>20 MR. ALLEN: You were interrupted by</p> <p>21 that speaking objection. Try it again.</p> <p>22 MR. HALL: I'm sick of the</p> <p>23 mischaracterizations.</p> <p>24 But go ahead.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q. Dr. Pue, if somebody had one bag of 2 exposure to microwave popcorn containing diacetyl 3 and had inhaled those fumes, are you of the 4 opinion that that exposure could result in 5 bronchiolitis obliterans? 6 MR. HALL: Objection. Asked and 7 answered. 8 A. It's probably unlikely. I can't say 9 it's zero because I don't know what the safe 10 threshold is for anybody. 11 Q. Millions of people have consumed 12 microwave popcorn over the decades? 13 A. I don't know the statistic on it, but I 14 -- that's probably a fair estimate. 15 Q. Besides Mr. Newkirk, Ms. Daughetee and 16 Mr. Stults, do you know anyone else who claims 17 injury from inhalation of diacetyl and microwave 18 popcorn as a plaintiff in litigation? As a 19 consumer, I should say. 20 A. Those are the ones that I'm aware of. 21 Q. Okay. With regard to Mr. Newkirk, do 22 you recall he had an over-ten-year history of 23 exposure to microwave popcorn? 24 A. I don't remember the specifics of that</p>	<p style="text-align: right;">Page 132</p> <p>1 accurate or not? 2 A. I have no independent confirmation of 3 its accuracy versus the other information I 4 obtained. 5 Q. So your answer is no, you don't know? 6 A. I have no independent confirmation of 7 it. I only have -- this is subjective information 8 that's provided to me by the patient and I 9 obtained the history and I document it. 10 Q. Did Mr. Stults change any other 11 historical facts when he called you up and told 12 you anything else that had occurred in years 13 previous to July of 2011 when you saw him? 14 Did he tell you anything else was 15 different? 16 A. The Prednisone history was slightly 17 different than what he had told me when I saw him 18 then. Not terribly different, but slightly 19 different. 20 Q. And I'm sorry, a poorly formed 21 question. 22 Did Mr. Stults tell you in this 23 conversation of September 2013 that anything else 24 that he told you in the July 2011 visit was wrong</p>
<p style="text-align: right;">Page 131</p> <p>1 case now. 2 Q. Okay. He was exposed to a lot more 3 than one bag? 4 A. Yes. 5 Q. Same for Ms. Daughetee, she had a 6 multiple-year exposure to microwave popcorn? 7 A. She had many years. 8 Q. And she had a lot more exposure than 9 one bag? 10 A. Yes. 11 Q. How do you know that the updated 12 estimates given to you by Mr. Stults just this 13 last Tuesday are accurate? 14 A. You say how do I know that they're 15 accurate? That's the question? I'm just 16 providing the information that's given to me. I 17 can't judge the accuracy one way or the other. 18 When I was talking to him he provided 19 me the information. He explained why it was 20 different and he seemed genuine as he was talking 21 to me. But that's all I can judge it on. That's 22 why I try not to draw judgments on it. 23 Q. So it would be fair to say you don't 24 know whether the newly provided information is</p>	<p style="text-align: right;">Page 133</p> <p>1 besides his omitted history of popcorn 2 consumption? 3 A. Not that I recall, no. 4 Q. So everything else you put in your 5 report that you got from him, from history, stayed 6 the same, he didn't amend or correct or add to any 7 of that, did he? 8 A. That's correct. 9 Q. The only thing that he changed was his 10 history of microwave popcorn consumption, which 11 went up? 12 A. That's correct. 13 Q. Have you been provided any information 14 as to what specific types of microwave popcorn 15 Mr. Stults consumed? 16 A. No. 17 Q. Do you know what brands of popcorn he 18 consumed? 19 A. I do not. 20 Q. Do you know -- do you know how much 21 diacetyl was contained in any of the butter 22 flavors contained in the popcorn that Mr. Stults 23 consumed? 24 A. I do not.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. Do you know how much diacetyl was 2 emitted from any of the brands of microwave 3 popcorn that Mr. Stults was exposed? 4 A. I do not. 5 Q. Have you put together any type of 6 exposure history that attempts to quantify how 7 much diacetyl Mr. Stults was exposed to? 8 A. I did not. 9 Q. In the context of a consumer, have you 10 done any study or analysis as to how much diacetyl 11 a consumer needs to be exposed to in order to have 12 an increased risk of BO? 13 A. I don't know what that value is. 14 Q. Do you have any independent way to know 15 that Mr. Stults has been exposed to enough 16 diacetyl, based on the quantity of diacetyl he was 17 exposed to, to have BO? 18 A. I don't know the independent measures 19 of that. If I answered that question correctly. 20 Q. Okay. So I take it none of the 21 opinions you're going to offer today are -- strike 22 that. 23 Is it correct that none of the opinions 24 that you're offering in this case are based on any</p>	<p style="text-align: right;">Page 136</p> <p>1 answer. 2 MR. HALL: You can ask it as a general 3 question, if you want. 4 MR. KAWALA: I will. I will do it that 5 way, thank you. I should have done that before. 6 I'll wait for the objection. 7 MR. HALL: I'm probably not going to 8 object. 9 BY MR. KAWALA: 10 Q. Dr. Pue, as to any -- any company that 11 provided butter flavor for the microwave popcorn 12 that Mr. Stults consumed, including Sensient, 13 Symrise, IFF, BBA, Givaudan and anybody else I 14 forgot, do you know how much diacetyl was 15 contained in that butter flavor? 16 A. I do not. 17 MR. HALL: See, I didn't object. 18 THE WITNESS: Good suggestion. 19 MR. ALLEN: Sometimes. 20 THE WITNESS: Are you approaching a 21 breaking point? 22 MR. KAWALA: Yes, we'll take a break. 23 (A short recess is taken.) 24 BY MR. KAWALA:</p>
<p style="text-align: right;">Page 135</p> <p>1 attempt to quantify Mr. Stults' exposure to 2 diacetyl? 3 A. That's correct. 4 Q. Okay. And by the way, do you know how 5 much diacetyl was contained in any of the popcorn 6 product that my client, Symrise, was involved in 7 the -- in providing the butter flavor for? 8 A. I do not. 9 Q. Doctor, do you know how much diacetyl 10 was contained in the butter flavor supplied by 11 defendant Sensient to any of the companies that 12 provided microwave popcorn that Mr. Stults 13 consumed? 14 A. I do not. 15 Q. And the same question as to defendant 16 IFF. Do you know how much diacetyl was contained 17 in the butter flavor that IFF provided to any of 18 the companies that sold microwave popcorn to 19 Mr. Stults, which he consumed? 20 A. I do not. 21 MR. ALLEN: Could you ask for BBA, 22 Givaudan and -- 23 MR. KAWALA: I'll ask it as a group 24 question because I think I'm safe I know the</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Back on the record, Dr. Pue. 2 We were talking about the additional 3 exposure history and I just want to get a little 4 bit more explanation from you of some of the other 5 entries that you made in your notes. 6 You said co-workers from that time also 7 remember eating it regularly. 8 A. I was writing that down as he was 9 telling it to me. And I said to him, what time? 10 1987? I remember him saying, no, I think it was 11 -- he went to Quest in 2000 I think. '99 or 12 2000 -- I'm sorry, '89 or '90. I apologize. I 13 made a mistake there. It wasn't '87, because 14 initially when he said it, I thought he meant in 15 '87 that his friends said he was eating it. But I 16 said so you -- so when were you at Quest? He said 17 I think it was '90. It was a couple years later. 18 Q. Okay. Did -- it looks like you wrote 19 Quest Diagnostics down there later. 20 A. He wrote -- that's my handwriting. I 21 mean, it was at the bottom of the page and I was 22 trying to squeeze it in. But that's what he told 23 me, where he worked. I was jotting notes quickly 24 while we were talking.</p>



<p style="text-align: right;">Page 138</p> <p>1 Q. So did Mr. Stults tell you that he 2 talked to people from Quest Diagnostics in the 3 recent past who told him that they remember seeing 4 him eat microwave popcorn at Quest? 5 A. That's what he said, yes. He said 6 since -- because he was telling me that he 7 remembered that it went back further than '91. He 8 said his wife said about -- reminded him about 9 when they started dating. He said also co-workers 10 had told him from that time they also remembered 11 him eating it regularly. And I said '98 -- '87 -- 12 I'm sorry, I'm getting my decades confused -- '87? 13 He said, I think I started Quest in like '89 or 14 '90, if I remember correctly what he said. 15 Q. Did Mr. Stults tell you who these -- 16 who these co-workers were? Did he give you names? 17 A. I didn't ask for names. 18 Q. Did he tell you that he called up these 19 people and asked them, questioned them about 20 whether or not they remembered him eating 21 microwave popcorn back in that '87 to '91 period? 22 A. He didn't tell me how the interaction 23 occurred with his co-workers. He just made the 24 statement.</p>	<p style="text-align: right;">Page 140</p> <p>1 house. 2 Q. So -- so when is the last time 3 Mr. Stults told you he has ever consumed a bag of 4 microwave popcorn? 5 A. Well, what he told me was in January 6 2011, he was searching on the internet to find -- 7 to look at causes of bronchiolitis obliterans and 8 he came across microwave popcorn butter flavor and 9 at that time he stopped using it altogether. He 10 states that was the first time he became aware 11 that it was -- there was an association there. 12 Q. And in fact, he saw you six months 13 later, correct? 14 A. Six or seven months, yeah. 15 Q. So as you understand the chronology, he 16 last ate microwave popcorn in January of 2011? 17 A. That's what he told me, yes. 18 Q. And then he sees you about six months 19 later in July of 2011? 20 A. Correct. 21 Q. And you ask him about his exposure to 22 microwave popcorn and he tells you exposure 23 through 2004, but doesn't recall exposure past 24 '04?</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Okay. Did he suggest to you that he 2 independently recalled eating microwave popcorn at 3 the time he worked at Quest or just that other 4 people told him that he did? 5 A. I don't remember. 6 Q. Okay. Then going to page 2 of the 7 notes, continued two bags per day, 2007. 8 We talked about that already, correct? 9 A. Correct. 10 Q. From 2007, 5/10. Tell me what your 11 nomenclature means there. 12 A. Until May of 2010. 13 Q. Okay. Then about one per day. 90 14 percent of the days had a bag. Moved houses in 15 May of 2010. 16 A. That's what he told me. 17 Q. Then he suggested to you that after May 18 of 2010, didn't continue? 19 A. He said when they moved into the new 20 house, they just had different habits and such and 21 he -- they had some microwave popcorn and they 22 might have popped it occasionally, but it wasn't 23 something that was a regular occurrence in their 24 household anymore once they moved to the new</p>	<p style="text-align: right;">Page 141</p> <p>1 A. What he reported to me was that he was 2 eating it regularly, two bags every night, from 3 '91 to '94 -- 4 MR. BENSON: I'm sorry, did you say, 5 Dr. Pue, '94 or did you mean 2004? 6 A. I'm sorry, '91 to 2004. Thank you. 7 Q. Okay. 8 A. Let me just finish reading here. 9 He didn't indicate to me, and I 10 apparently didn't ask him, did he stop it 11 completely in 2004 or, you know -- all I have in 12 the note is that's what he told me when he was 13 eating it regularly was from '91 to 2004, two bags 14 a night. 15 Q. Well, when you asked Mr. Stults about 16 his consumption history, did you say tell me how 17 -- tell me for what period of time you ate two 18 bags a night or did you say tell me about your 19 consumption history? 20 A. I said tell me about your history with 21 microwave popcorn. 22 Q. Okay. So you would have given him the 23 opportunity to provide a full history to you? 24 A. I offered it as an open-ended question.</p>



<p style="text-align: right;">Page 142</p> <p>1 Q. Right. When Mr. Stults called you 2 back, he didn't say you didn't ask me about this. 3 He just said I remember more? 4 A. Correct. 5 Q. Okay. Found bags from 2007 and '06 6 when he moved in in 2010. They were in back of 7 pantry. 8 What's the significance of that, 9 please? 10 A. He was indicating that initially he had 11 stated -- the reason he knew 2007 was when they 12 stopped eating it as regularly as they had or cut 13 down was because when they moved, they found bags 14 that were from 2006, the purchase dates on it. 15 And that was how he had surmised that that's when 16 they were still eating popcorn regularly. It was 17 in -- because they had used up the stuff that they 18 had had. And then when he looked in there, there 19 was still stuff from 2006 and 2007. 20 MR. ALLEN: Did you say they were 21 purchase dates? 22 A. He said there were dates on them. So I 23 don't know what the date represented, but that was 24 dates that were on the bags.</p>	<p style="text-align: right;">Page 144</p> <p>1 been dated '06/'07? 2 A. No. That's all he told me. 3 MR. KAWALA: Okay. The rest of the 4 history I can read pretty straightforward. 5 THE WITNESS: Okay. I just got a page 6 that I need to answer, can I have one minute? 7 MR. KAWALA: Oh, yes. Please. 8 THE WITNESS: Thank you. 9 (A discussion is held off the record.) 10 ----- 11 Thereupon, Exhibit 9 is marked for 12 purposes of identification. 13 ----- 14 BY MR. KAWALA: 15 Q. Back on the record, Dr. Pue. 16 It looks like we have a two-page 17 document. Maybe you could explain to us what it 18 is, please. 19 A. This is the check-in sheet and physical 20 exam sheet for when patients come in for an 21 evaluation. The front is -- the top part is 22 filled out by the medical assistant who does the 23 vital signs. And then if it's a follow-up visit, 24 there's questions that we ask. But this was a</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. Okay. When he -- when he had talked 2 about the 2007 date being the date that he 3 continued to eat two bags a day, I thought you 4 told me he keyed that to an event. 5 A. Well, the two bags a day he had told me 6 -- initially he had told me, the first time I 7 talked to him, that it was in 2004. He said it 8 just stopped being a regular occurrence because 9 his kids got older. But then when I talked to him 10 the other day, he said 2007 was that date, not 11 2004. 12 Q. But did he tell you what event occurred 13 in 2007 that jogged his memory that he ate two 14 bags a day from '04 to '07? 15 A. Just indicating that after talking with 16 his wife, that's the -- that was the date that he 17 stated was the correct date. 18 Q. Did Mr. Stults tell you that he kept 19 any of the bags of microwave popcorn that he 20 recovered from his pantry? 21 A. He didn't say that he did. I didn't 22 ask him. 23 Q. Did he tell you anything more about the 24 bags of popcorn, except that they appeared to have</p>	<p style="text-align: right;">Page 145</p> <p>1 first visit, so most of the questions are skipped. 2 MR. ALLEN: Is this Exhibit 9? 3 A. Exhibit 9. And on the back side is my 4 notes that I take while I'm doing the physical 5 exam that I'm supposed to use when I do my 6 dictation. Apparently I skipped that that day 7 when I was doing my dictation. 8 Q. Okay. In summary form, can you tell us 9 what the remarkable findings were? You don't have 10 to tell us the normal findings. 11 A. He had mild obesity. Mild erythema of 12 the nasal mucosa. Mild neck obesity. He had mild 13 labored breathing at rest and with walking. I 14 described it as moderate when he was walking at a 15 slow pace. And I have him walk -- most patients 16 who have shortness of breath, I have them walk 17 down our hallway, which is a 50-foot hallway. He 18 had some mild increased AP diameter of the chest 19 and mild hyperresonance on exam. If I just put 20 one arrow, that indicates mild to me for my 21 records. 22 I indicated that he had expiratory 23 wheezing and he had diminished breath sounds 24 bilateral. He had prolonged expiration. Mild</p>

<p style="text-align: right;">Page 146</p> <p>1 abdominal obesity. And the remainder of the exam</p> <p>2 I indicated was normal.</p> <p>3 Q. Did you take an oxygen saturation on</p> <p>4 Mr. Stults?</p> <p>5 A. Yes. It was 95 percent on room air at</p> <p>6 rest. That's on the front of the first page.</p> <p>7 Q. Okay. And is that within the range of</p> <p>8 normal?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have any concerns for</p> <p>11 Mr. Stults' oxygen saturation after exertion?</p> <p>12 A. I did not measure an exertional oxygen</p> <p>13 saturation.</p> <p>14 Q. Did Mr. Stults ever complain to you</p> <p>15 that he passed out or had any signs or symptoms of</p> <p>16 hypoxia related to his dyspnea on exertion?</p> <p>17 A. I don't recall that specifically.</p> <p>18 Q. Did Mr. Stults describe to you any</p> <p>19 mental status changes that he had?</p> <p>20 A. I don't recall any.</p> <p>21 Q. Did Mr. Stults describe to you any</p> <p>22 complaints he had of cognitive deficits or</p> <p>23 difficulties?</p> <p>24 A. Not that I recall.</p>	<p style="text-align: right;">Page 148</p> <p>1 have it here, Exhibit 5.</p> <p>2 BY MR. KAWALA:</p> <p>3 Q. Okay. Based upon the HRCT that was</p> <p>4 done when Mr. Stults came in to see you, what were</p> <p>5 the relevant findings? This is Exhibit 5.</p> <p>6 A. The radiologist indicated borderline</p> <p>7 bronchiectasis changes in the bilateral lower</p> <p>8 lobes -- or lower lung fields he described. Mild</p> <p>9 heterogeneous attenuation on expiration images</p> <p>10 without definite air trapping.</p> <p>11 Q. What's the significance to the</p> <p>12 borderline bronchiectasis?</p> <p>13 A. That's a finding that is seen in</p> <p>14 bronchiolitis obliterans and is an abnormality of</p> <p>15 the lungs.</p> <p>16 Q. Is there anything remarkable about that</p> <p>17 finding that tells you that it's the result of</p> <p>18 diacetyl exposure or not?</p> <p>19 A. That is not specific to diacetyl. It</p> <p>20 is a finding that is seen in diacetyl exposure.</p> <p>21 Q. Okay. Would you find the same type of</p> <p>22 finding in idiopathic bronchiolitis obliterans or</p> <p>23 bronchiolitis obliterans caused by connective</p> <p>24 tissue disease?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Did Mr. Stults have any difficulty in</p> <p>2 providing you -- strike that.</p> <p>3 You also did -- I think we already --</p> <p>4 we had just marked it, it was a -- he had a CT</p> <p>5 scan done when Mr. Stults came in to see you?</p> <p>6 A. That's correct.</p> <p>7 Q. CT of the chest without contrast?</p> <p>8 A. That's correct.</p> <p>9 Q. And did you do inspiratory and</p> <p>10 expiratory views?</p> <p>11 A. Yes. It was a high resolution.</p> <p>12 MR. KAWALA: All right. Exhibit 5, I</p> <p>13 don't know if you've got a copy of it or not.</p> <p>14 THE WITNESS: Can I get my chart back?</p> <p>15 MR. ALLEN: I knew it wouldn't last</p> <p>16 long.</p> <p>17 THE WITNESS: Thank you. I'm actually</p> <p>18 going to put this back in so it doesn't get lost.</p> <p>19 MR. KAWALA: I'm going to have another</p> <p>20 one for you in a second, but go ahead.</p> <p>21 THE WITNESS: I just don't want to lose</p> <p>22 anything.</p> <p>23 MR. KAWALA: Right.</p> <p>24 THE WITNESS: All right. Yes, I do</p>	<p style="text-align: right;">Page 149</p> <p>1 A. It can be seen in any patient with</p> <p>2 bronchiolitis obliterans of any cause.</p> <p>3 Q. Okay. Non-specific mild heterogenous</p> <p>4 attenuation. What do you mean by attenuation?</p> <p>5 A. Attenuation means differences in the</p> <p>6 density of the lung tissue indicating different</p> <p>7 amounts of air versus tissue.</p> <p>8 Q. Any pattern to that attenuation?</p> <p>9 A. This would be consistent with a mosaic</p> <p>10 pattern when we say heterogenous attenuation.</p> <p>11 Q. Mosaic pattern is sort of a 50/50</p> <p>12 finding in bronchiolitis obliterans, isn't it?</p> <p>13 A. That's correct.</p> <p>14 Q. It's not diagnostic or pathognomonic</p> <p>15 for anything, is it?</p> <p>16 A. It's a finding that is 50/50 present,</p> <p>17 but when present is supportive of a diagnosis of</p> <p>18 bronchiolitis obliterans.</p> <p>19 Q. And it's often seen in bronchiolitis</p> <p>20 obliterans with -- with multiple causes?</p> <p>21 A. It's a finding of bronchiolitis</p> <p>22 obliterans independent of the cause.</p> <p>23 Q. Okay. Any reference in the HRCT report</p> <p>24 to a mosaic pattern being present?</p>

<p style="text-align: right;">Page 162</p> <p>1 related to his current illness. He can't exercise  2 anymore. He's short of breath walking to the  3 mailbox. Gaining weight. He gained 15 to 20  4 pounds in the year that I saw him in 2011. By his  5 description.  6 Q. Okay. Are you going to offer any  7 opinions on depression and anxiety?  8 A. No.  9 Q. Okay. Is that all the handwritten  10 notes?  11 A. That's all my handwritten notes, yes.  12 MR. BENSON: Can I just ask, on page 4,  13 where it says, goes up and down and ragweed, is  14 that also you or did he fill that out?  15 THE WITNESS: No, that's his  16 handwriting, not mine.  17 MR. BENSON: Okay. Thank you.  18 Q. I think now we've gone through  19 everything that we had copies made of. So that's  20 good. I may just get back to my outline and see  21 what else I need to cover with you, Doctor.  22 A. Sure.  23 Q. Do you have any opinion as to what  24 level of consumer exposure is necessary to</p>	<p style="text-align: right;">Page 164</p> <p>1 you're aware of.  2 A. I have not seen any others.  3 Q. Is there any other writings you've  4 seen, setting aside expert reports in litigation,  5 that assert that consumers of diacetyl are --  6 consumers of microwave popcorn are at risk of  7 obstructive lung damage due to inhalation of  8 diacetyl?  9 A. I haven't seen those, no.  10 Q. And I think we discussed it before, but  11 is there a dose-response relationship regarding  12 the amount of diacetyl in microwave popcorn that  13 would result in lung injury?  14 A. I don't know what the safe level is, so  15 I'm not sure what the dose-response curve looks  16 like.  17 Q. Okay. So by saying you don't know if  18 it's a dose-response relationship, are you saying  19 that a very negligible amount of diacetyl could  20 result in obstructive lung damage to a consumer?  21 A. I don't know what the safe threshold  22 is, so I don't know what a negligible amount is.  23 Q. Okay. Do you assume that there is,  24 however, a dose-response relationship between</p>
<p style="text-align: right;">Page 163</p> <p>1 diacetyl to result in BO?  2 A. I do not know the value of that.  3 Q. Do you have any opinion as to how much  4 diacetyl Mr. Stults was exposed to either on a  5 bag-per-bag or yearly or any basis over the  6 history of his alleged exposure?  7 A. No, I do not.  8 Q. Are you aware of any literature  9 describing consumers contracting bronchiolitis  10 obliterans due to inhalation of diacetyl besides  11 the Egilman article?  12 A. No.  13 Q. Do you recall that Dr. Egilman  14 published that article in a journal he is the  15 editor and owner of?  16 A. No, I did not know that.  17 Q. Do you know of anyone besides  18 Dr. Egilman who has ever written in any of the  19 peer-reviewed literature that consumers of  20 microwave popcorn containing diacetyl have an  21 inhalation risk of lung damage?  22 A. You were asking written? Written  23 documentation of that?  24 Q. Any peer-reviewed literature that</p>	<p style="text-align: right;">Page 165</p> <p>1 microwave popcorn containing diacetyl inhalation  2 by a consumer and bronchiolitis obliterans?  3 MR. HALL: Object to the form. Asked  4 and answered.  5 A. I don't assume anything. I don't know  6 what the safe values are.  7 Q. Okay. Since you don't know what the  8 dose is or the duration is, I take it you have no  9 opinions specifically as to when pathologic or --  10 or other changes in the lung occur following  11 exposure?  12 A. I don't know what the time frame is to  13 when that occurs, if that's the question.  14 Q. Yes, sir.  15 A. Okay. I don't know the exact time  16 frame of that.  17 Q. And depending on which exposure history  18 we take, let's work with the newest one,  19 Mr. Stults claims that he was first exposed to  20 microwave popcorn containing diacetyl in 1987.  21 A. That is the information he gave me,  22 yes.  23 Q. And to the best of your knowledge,  24 Mr. Stults had no signs, symptoms or complaints</p>

<p style="text-align: right;">Page 194</p> <p>1 diagnosis is for Mr. Stults' condition?</p> <p>2 A. I've read the notes, but as I</p> <p>3 mentioned, I did not take notes as I was scanning</p> <p>4 through the most recent records.</p> <p>5 Q. Okay. And I have them at hand here if</p> <p>6 that would refresh your recollection.</p> <p>7 While I'm digging for that, can</p> <p>8 bronchiolitis obliterans be idiopathic?</p> <p>9 A. Yes.</p> <p>10 Q. And idiopathic simply means there's no</p> <p>11 cause?</p> <p>12 A. Idiopathic means it's the cause that we</p> <p>13 haven't figured out what it is yet. It means you</p> <p>14 haven't identified a known cause.</p> <p>15 Q. Okay. And is some portion or</p> <p>16 percentage of bronchiolitis obliterans that occurs</p> <p>17 in the United States population idiopathic?</p> <p>18 A. Yes. As I said before, it just means</p> <p>19 that you haven't figured out the cause for that</p> <p>20 particular patient yet.</p> <p>21 Q. Can you give me any sense, even in a</p> <p>22 ballpark sense, of what proportion of</p> <p>23 bronchiolitis obliterans could be fairly</p> <p>24 characterized as idiopathic?</p>	<p style="text-align: right;">Page 196</p> <p>1 being autoimmune rheumatoid arthritis?</p> <p>2 A. I did see that on the record, yes.</p> <p>3 Q. Do you have any -- any criticism of</p> <p>4 Dr. Schmitt's differential diagnosis?</p> <p>5 Do you think any of those differential</p> <p>6 diagnoses are wrong or improper in this case?</p> <p>7 A. Well, as I stated previously,</p> <p>8 idiopathic, I only call something idiopathic if</p> <p>9 I've excluded all reasonable possibilities.</p> <p>10 And with regard to RA, with regard to</p> <p>11 the literature -- to the records that I reviewed</p> <p>12 on this case, this did not appear to be consistent</p> <p>13 with an RA illness associated with lung disease.</p> <p>14 Q. So do you think that based on the fact</p> <p>15 that you believe records support a diagnosis that</p> <p>16 Mr. Stults' bronchiolitis obliterans was caused by</p> <p>17 exposure to diacetyl, do you disagree with the</p> <p>18 inclusion of idiopathic bronchiolitis obliterans</p> <p>19 in Dr. Schmitt's medical record?</p> <p>20 A. I do.</p> <p>21 Q. Setting aside the fact that Mr. Stults</p> <p>22 has been exposed to diacetyl in microwave popcorn</p> <p>23 based upon the history and the revised history</p> <p>24 that he gave you, is there any other pathognomonic</p>
<p style="text-align: right;">Page 195</p> <p>1 A. I don't know the percentage. In my</p> <p>2 clinical practice, I almost always have had a</p> <p>3 cause in patients that I've seen.</p> <p>4 Q. Is the fact that a treating physician</p> <p>5 hypothesized a cause, does that mean that the</p> <p>6 bronchiolitis obliterans isn't idiopathic?</p> <p>7 A. For something to be defined as</p> <p>8 idiopathic means that there's no other</p> <p>9 identifiable likely causes for the disease</p> <p>10 process. So if the physician feels that there is</p> <p>11 a cause, that's potentially -- that's the cause.</p> <p>12 Q. And whether that physician's opinion is</p> <p>13 correct or incorrect -- I'm trying to think if</p> <p>14 there's a better way to state it.</p> <p>15 If a physician incorrectly believes</p> <p>16 that somebody's bronchiolitis obliterans is caused</p> <p>17 by diacetyl inhalation, when it's not, does that</p> <p>18 mean that -- strike that.</p> <p>19 I can't put it in the form of a</p> <p>20 question.</p> <p>21 Were you aware that Dr. Schmitt</p> <p>22 maintained three differential diagnoses for</p> <p>23 Mr. Stults, one being consumer exposure to</p> <p>24 diacetyl, another being idiopathic, and another</p>	<p style="text-align: right;">Page 197</p> <p>1 or footprint or remarkable finding that you can</p> <p>2 point to that indicates that BO caused his or was</p> <p>3 caused by diacetyl?</p> <p>4 A. The history is an important part of</p> <p>5 obtaining a diagnosis, and I was not able to</p> <p>6 identify any other causes. I went through</p> <p>7 chemical exposure, work exposures, lung injuries,</p> <p>8 infections, and did not come to any other causes.</p> <p>9 And he had the long history of diacetyl exposure</p> <p>10 that he described.</p> <p>11 Q. Isn't it true that the people for --</p> <p>12 for a long time, for decades, people have been</p> <p>13 diagnosed with bronchiolitis obliterans where</p> <p>14 there is -- has been no known chemical exposure,</p> <p>15 no infections, no external causes?</p> <p>16 A. Well, that's the idiopathic ones. And</p> <p>17 that's become less and less frequent as we define</p> <p>18 exposures that do lead to bronchiolitis</p> <p>19 obliterans.</p> <p>20 Q. Okay. Besides Mr. Stults' history, is</p> <p>21 there any other way to distinguish his condition</p> <p>22 of bronchiolitis obliterans secondary to diacetyl</p> <p>23 exposure from idiopathic bronchiolitis obliterans?</p> <p>24 A. Bronchiolitis obliterans does not look</p>

<p style="text-align: right;">Page 198</p> <p>1 different in different -- in patients from 2 different causes.</p> <p>3 Q. So would you agree that the basis for 4 your opinion that Mr. Stults has bronchiolitis 5 obliterans secondary to diacetyl exposure is based 6 upon the history that Mr. Stults provided to you 7 of exposure to diacetyl in microwave popcorn? 8 MR. HALL: Object to the form. Asked 9 and answered.</p> <p>10 A. That's -- that's a component of the 11 diagnosis. The other part of it is the findings, 12 the physical findings, the X-rays, the PFTs, 13 physical exam. That's all the confirmational 14 findings of bronchiolitis obliterans and then the 15 history that he had exposure that would cause it.</p> <p>16 Q. But the clinical findings, the 17 radiology findings, the PFT findings, I think you 18 testified already, all of that clinical 19 information simply documents that he has BO. It 20 doesn't document that he has BO due to diacetyl 21 exposure, correct? 22 A. That's correct.</p> <p>23 Q. And just for purposes of a hypothetical 24 question, if Mr. Stults had never consumed a bag</p>	<p style="text-align: right;">Page 200</p> <p>1 correctly, if Mr. Stults was assumed to have 2 bronchiolitis obliterans secondary to rheumatoid 3 arthritis, or other connective tissue disease, 4 that the clinical findings, the PFTs, the 5 radiology findings would pretty much look the same 6 as what he's got? 7 A. Can you read back the question again? 8 Or rephrase it? 9 Q. Let me rephrase it. 10 A. There's a lot there. 11 Q. What I'm trying to do is set aside the 12 history. If you assume that Mr. Stults has -- 13 strike that. 14 If a patient has bronchiolitis 15 obliterans due to -- secondary to rheumatoid 16 arthritis or a connective tissue disease, would 17 the -- would the PFT results, would the complaints 18 of shortness of breath, cough, chest X-ray, would 19 those -- could those all look the same as what 20 Mr. Stults has? 21 A. Bronchiolitis obliterans for many 22 causes will have similar findings on those 23 objective findings. 24 Q. Okay. What's the -- what's the</p>
<p style="text-align: right;">Page 199</p> <p>1 of microwave popcorn and had never been exposed to 2 diacetyl, then, of course, your opinion would be 3 that exposure to diacetyl would be excluded from 4 the differential?</p> <p>5 A. That's correct.</p> <p>6 Q. And the reason that exposure to 7 diacetyl is included in your differential, and is, 8 in fact, your diagnosis, is based upon Mr. Stults' 9 history?</p> <p>10 A. That's correct.</p> <p>11 Q. And would you agree with me that 12 Mr. Stults' history as to when he has consumed 13 microwave popcorn and as to how much microwave 14 popcorn he's consumed has been -- has differed 15 from time to time?</p> <p>16 A. Can you say that again to make sure I 17 answer it correctly? 18 MR. KAWALA: Go ahead. 19 (The record is read back as requested.) 20 THE WITNESS: He did provide a 21 different history to me in July of 2011 than he 22 did on September 10th, 2013. 23 BY MR. KAWALA: 24 Q. And if I understand your testimony</p>	<p style="text-align: right;">Page 201</p> <p>1 accepted accuracy of a positive CCP test for the 2 presence of rheumatoid arthritis? 3 A. You mean the specificity? 4 Q. Yes, sir. 5 A. Specificity is reported at 98 percent, 6 I believe, 95 percent, somewhere in that range. 7 Q. Does Mr. Stults have a family history 8 of rheumatoid arthritis? 9 A. I believe his mother may have had 10 rheumatoid arthritis. Let me look. 11 Q. I think you're correct. 12 A. Yeah. 13 Q. Just for the record, where -- what are 14 you referring to? 15 A. I'm looking back through my history 16 that I obtained from him. 17 I didn't have it written down. He 18 didn't -- he said his mother had hypertension, but 19 I think I might have read it in one of the other 20 records, in the rheumatologist's records, that 21 there was a family history of rheumatoid arthritis 22 in his mother. 23 Q. Is rheumatoid arthritis known to have a 24 hereditary or genetic frequency associated with</p>

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1 brands of microwave butter-flavored popcorn that  
 2 he and his wife consumed?  
 3 A. He -- if he had told me specific  
 4 brands, I would have put it into the report, as I  
 5 have not made a habit of specifically asking  
 6 people what brands they were exposed to.  
 7 Q. Why not?  
 8 A. I just never thought to do that.  
 9 Q. Okay. If you would, take a look at  
 10 Exhibit 10.  
 11 A. Would you like me to do that in the  
 12 future?  
 13 Which is Exhibit 10?  
 14 Q. Far be it from me to tell you what to  
 15 do, Doctor.  
 16 It's this.  
 17 A. Okay. The questionnaire.  
 18 Q. Page 2.  
 19 A. Yes.  
 20 Q. Your handwritten note at the bottom.  
 21 1991, daughter born. Wife put baby to bed. He  
 22 popped two bags microwave butter lovers popcorn  
 23 every night.  
 24 Do you see that?

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1 A. Yes.  
 2 Q. Are you aware that Butter Lovers is  
 3 actually a brand --  
 4 A. I was not aware of that.  
 5 Q. -- of popcorn?  
 6 Did he -- so in the con- -- was that  
 7 his language --  
 8 A. Yes.  
 9 Q. -- that he used? Butter lovers?  
 10 A. Yes.  
 11 Q. Okay. And then my last question for  
 12 you, Dr. Pue, is, do you currently hold any  
 13 opinions that are germane to this case that you  
 14 have not either testified to during the course of  
 15 this deposition or that are contained in your  
 16 written report?  
 17 A. To my knowledge, I've shared with you  
 18 my full opinions.  
 19 Q. And as you sit here today, there aren't  
 20 any additional opinions that you currently have in  
 21 your head that you expect to testify to at trial  
 22 that we haven't either talked about or that you  
 23 haven't written down in your report?  
 24 That's a true statement?

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1 MR. HALL: That's two questions.  
 2 MR. BENSON: You're right, that is two  
 3 questions.  
 4 Q. But was that a true statement?  
 5 A. That is a true statement. There's  
 6 nothing else besides what's in my report or what  
 7 we've talked about today.  
 8 MR. BENSON: Dr. Pue, you and I haven't  
 9 had a chance to meet until day. It was a pleasure  
 10 meeting you. Thank you for your testimony.  
 11 THE WITNESS: Thank you.  
 12 MR. ALLEN: Emily?  
 13 MS. FITZGERALD: I don't have anything.  
 14 MR. ALLEN: I think we're finished  
 15 then. Thank you.  
 16 THE WITNESS: Thank you.  
 17 I waive.  
 18 (Signature waived.)  
 19 -----  
 20 Thereupon, the foregoing proceedings  
 21 concluded at 3:50 p.m.  
 22 -----  
 23  
 24

1 State of Ohio : C E R T I F I C A T E  
 2 County of Franklin: SS  
 3 I, Kathryn E. Cathell, RMR, CRR, a Notary  
 4 Public in and for the State of Ohio, certify that  
 5 Charles A. Pue, M.D. was by me duly sworn to  
 6 testify to the whole truth in the cause aforesaid;  
 7 testimony then given was reduced to stenotype in  
 8 the presence of said witness, afterwards  
 9 transcribed by me; the foregoing is a true record  
 10 of the testimony so given; and this deposition was  
 11 taken at the time and place specified on the title  
 12 page.  
 13 Pursuant to Rule 30(e) of the Federal Rules of  
 14 Civil Procedure, the witness and/or the parties  
 15 have waived review of the deposition transcript.  
 16 I certify I am not a relative, employee,  
 17 attorney or counsel of any of the parties hereto,  
 18 and further I am not a relative or employee of any  
 19 attorney or counsel employed by the parties hereto,  
 20 or financially interested in the action.  
 21 IN WITNESS WHEREOF, I have hereunto set my hand  
 22 and affixed my seal of office at Columbus, Ohio, on  
 23 September 23, 2013.  
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